IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 878/2006
(Hari Singh Vs. State of Rajasthan & Anr.)

Date of Order : 15/09/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Sandeep Mehta for the petitioner.
Mr. Ashok Upadhyay, public prosecutor.
Mr. Yashwat Mehta for the non-petitioner No.2.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner has challenged the orders dated 24.10.2005 and 5.6.2006 passed by Additional Chief Judicial Magistrate, Mount Abu (for short 'the trial court' hereinafter) in Criminal Case No. 146/05, whereby the trial court took the cognizance of offence under Section 186 IPC as also read over the substance of accusation.

I have heard learned counsel for the petitioner, public prosecutor and the counsel appearing for the non-petitioner No.2. Carefully gone through the orders impugned.

It is contended by learned counsel for the petitioner that the offence punishable under Section 186 IPC is non-cognizable and therefore, without the permission of the Court, the police could not have investigated the matter and filed the report. In the instant case, the matter was reported to the police and after investigation, the police filed report, on which the trial court took the cognizance of the offence and therefore, according to learned counsel for the petitioner, the order taking cognizance as also entire proceeding is bad in law. Offence punishable under Section 186 IPC is non-cognizable and bailable. Learned counsel further submits that sub-section (2) of Section 155 Cr.P.C. provides that no police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial whereas according to learned counsel for the petitioner, in the instant case, there is no order of the Magistrate directing the police to investigate a non-cognizable offence. It was further contended that the order taking cognizance is barred by Section 195 Cr.P.C. Section 195 (1) (a) (i) provides that no court shall take cognizance of any offence punishable under Secs. 172 to 188 (both inclusivie) of the Indian Penal Code (45 of 1860) except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. Learned counsel submits that in the instant case, no complaint has been

filed in writing by the public servant concerned or some other public servant to whom he is administratively subordinate.

In Rupan Deol Bajaj Vs. Kanwar Pal Singh Gill, AIR 1996 SC 309 Hon'ble Supreme Court observed that where the allegations in the FIR do not constitute a cognizable offence but constitute a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under S. 155(2) of the Code and such investigations, if carried out, would not be validated even by an order of the Magistrate obtained subsequently.

In Avinash Vs. State of Maharashtra 1983 Cri.L.J. 1833, Bombay High Court held that the investigation carried out by the police in respect of non-cognizable offence, without permission obtained from the concerned Magistrate under Section 155 (2) of the Code of Criminal Procedure, 1973, is illegal, and therefore, liable to be quashed.

In Shivanand Giridhar Naik Vs. The Senior Inspector of Police and another 2000 Cri. L.J. 4776, Bombay High Court held that in a non-cognizable offence, the police machinery had no authority to investigate into this offence, and therefore, the police ought to have obtained the permission or order from the Magistrate having power to try the said offence. This being the position, the entire investigation carried out and the charge

sheet filed by the police was without any authority or jurisdiction and therefore, the prosecution initiated against the petitioner is required to be set aside.

In this view of the matter, in my view, the trial court fell in error in taking cognizance of offence as also reading over the substance of accusation. In the instant case, the report was filed by one Chandresh with the police, on which the police investigated the matter and filed charge-sheet without there being an order of the concerned Magistrate. In the circumstances, therefore, the order impugned dated 24.10.2005 taking cognizance as also the order dated 5.6.2006 reading over the substance of accusation, deserve to be set aside and the proceeding initiated on filing of the challan by the police for the offence under Section 186 IPC which is non-cognizable offence without the order of the Magistrate under sub-section (2) of Section 155 of the Code is without any authority or jurisdiction and therefore, deserves to be quashed.

In the result, the criminal misc. petition is allowed. The orders impugned dated 24.10.2005 and 5.6.2006 passed by the trial court are set aside and the proceeding in Criminal Case No. 146/05 pending before the trial court against the petitioner stands quashed.

(H.R.PANWAR),J.

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